

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Patrick Bandy,

Plaintiff,

V.

Wells Fargo Bank, N.A.,

Defendant.

Civil Action No.: 5:14-cv-1113

COMPLAINT

For this Complaint, the Plaintiff, Patrick Bandy, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Patrick Bandy (“Plaintiff”), is an adult individual residing in San Antonio, Texas, and is a “person” as defined by 47 U.S.C. § 153(39).

4. The Defendant, Wells Fargo Bank, N.A. (“Wells Fargo”), is a South Dakota business entity with an address of 101 North Phillips Avenue, Sioux Falls, South Dakota, and is a “person” as defined by 47 U.S.C. § 153(39).

FACTS

5. In October 2014, Wells Fargo began calling Plaintiff's cellular telephone by using an automated telephone dialer system ("ATDS") and/or by using an artificial or prerecorded voice.

6. When Plaintiff answered the calls, Wells Fargo used a prerecorded message instructing Plaintiff to enter his social security or account number.

7. Plaintiff does not have an account with Wells Fargo.

8. Plaintiff has no business relations with Wells Fargo and never requested by an agreement or otherwise that he be contacted.

9. Plaintiff never provided his cellular telephone number to Wells Fargo and never provided his consent to Wells Fargo to be contacted on his cellular telephone.

10. Plaintiff called Wells Fargo in an effort to get the calls to stop. Plaintiff advised Wells Fargo that he was being called in error and directed Wells Fargo to remove his number from the account and to cease all communications with him.

11. Thereafter, despite having been informed of the foregoing, Wells Fargo continued to call Plaintiff.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

12. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

13. Plaintiff never provided his cellular telephone number to Wells Fargo and never provided his consent to be contacted on his cellular telephone.

14. Without Plaintiff's consent, Wells Fargo contacted the Plaintiff by using an automatic telephone dialing system and by using a prerecorded or artificial voice on his cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

15. Wells Fargo continued to place automated calls to Plaintiff's cellular telephone after being advised multiple times it had the wrong number and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

16. The telephone number called by Wells Fargo was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

17. The calls from Wells Fargo to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. Wells Fargo's telephone system has the capacity to store numbers in a random and sequential manner and uses the system to place the calls.

19. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);

- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: December 19, 2014

Respectfully submitted,

By: /s/ Sergei Lemberg

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